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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 153

ELEANOR TAFT TILTON, et al
Appellants,

v.

ELLIOT L. RICHARDSON, Secretary of the United States Department of Health, Education and Welfare, et al
Appellees.

ON APPEAL FROM A THREE-JUDGE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

OBJECTIONS OF APPELLEE MARVIN K. PETERSON, CHAIRMAN OF THE COMMISSION ON AID TO HIGHER EDUCATION OF THE STATE OF CONNECTICUT, TO MOTION FOR LEAVE TO FILE BRIEF FOR CONNECTICUT STATE CONFERENCE OF BRANCHES OF THE NAACP, CONNECTICUT CIVIL LIBERTIES UNION, CONNECTICUT COUNCIL OF CHURCHES, CONNECTICUT JEWISH COMMUNITY RELATIONS COUNCIL, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, RITA JOHNSON, ROBERT S. EARLEY, DONALD L. WASSMAN, LAURA WILEY HANSEN, WILLIAM MANCHESTER AND EDGAR W. DAVIS, AMICI CURIAE.

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Appellee, Marvin K. Peterson, objects to the Motion for the following reasons:

1. The Motion is purported to be filed in conformance with Rule 42 of the Rules of the Supreme Court of the United States, but aside from the reference to the rule there has not been compliance with the requirement of said rule.

Pursuant to Rule 42(2) the brief of an amicus curiae in cases before the Court on the merits may be filed only after order of this Court and within the time allowed for the filing of the brief of the party supported. In the instant case, the brief of the appellants was filed on August 24, 1970. The purported amici curiae have filed Motion for Leave to File Brief Amici Curiae and Brief of Amici Curiae on February 5, 1971, more than five and one-half months late. This tardiness is inexcusable since counsel for the amici curiae were also counsel for the individual plaintiffs in the instant case.

This Court has very emphatically announced its attitude mandating compliance with procedural rules in the recent case of *Shapiro* v. *Doe*, 90 S. Ct. 421 (1970), in which it dismissed the appeal of the State of Connecticut because the appeal had been docketed two days beyond the time prescribed by Rule 13 of this Court.

2. The purported amici curiae are attempting to introduce into this case documentation that was never introduced into evidence at the trial of this case, but was introduced in another case which is not before this Court (*Johnson, et al* v. *Sanders, et al*, 319 F. Supp. 421); so that this Court is being placed in the novel position of being asked to admit new evidence into this case which the lower court did not have before it and did not consider in arriving at its decision on the merits. Certainly, this attempted procedure to introduce new evidence at the appellate level is unorthodox to say the least. The appellee herein can find no precedent for such procedure nor do the purported amici curiae cite any precedent.

3. The purported amici curiae appear to be attempting to have this Court decide that the United States District Court for the District of Connecticut erred when it ruled in the case of *Johnson, et al* v. *Sanders, et al*, supra, that the plaintiffs

therein had no standing to present a claim under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. We submit that this attempt is not only unorthodox but highly improper.

4. The Motion, as noted above, raises additional questions and issues which are not susceptible of resolution within the framework of this case. Rather than aiding the Court in its deliberation of the issues, we submit it would result in misleading and confusing the Court.

The Court should neither countenance nor condone such flagrant non-compliance with procedural requirements.

Accordingly, for any and all of the foregoing reasons and in the interest of orderly procedure, the Motion should be denied.

February 11, 1971

Respectfully submitted,

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Attorneys for Appellee,
Marvin K. Peterson, Chairman of
the Commission on Aid to Higher
Education of the State of Connecticut